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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PRADEEP KUMAR,

Plaintiff and Respondent,

v.

CHITRA PARASURAMAN,

Defendant and Appellant.

H043798

(Santa Clara County

Super. Ct. No. 115CH006483)

After lengthy and protracted proceedings, the trial court issued a three-year civil harassment restraining order protecting plaintiff from defendant. Defendant's request for a reciprocal order was denied, and plaintiff was awarded attorney's fees and costs in the amount of \$33,193.50. Defendant challenges the fee award on appeal. For the reasons stated here, we will affirm.

I. BACKGROUND

Represented by an attorney, Pradeep Kumar filed a request for a civil harassment restraining order in August 2015, seeking protection from Chitra Parasuraman.

Defendant retained an attorney, the parties appeared in court, a temporary restraining order was granted, a schedule was set for discovery and the filing of any cross-action, and trial was set for October 20th. Defendant cross-filed for a civil harassment restraining order, and plaintiff's response included a request for \$3,500 in attorney's fees.

Defendant's attorney withdrew in October, and the court denied defendant's ex parte request to continue the trial. Defendant hired a new attorney who sought a four-month

trial continuance. The ex parte motion was denied, and trial commenced on October 20th.

At the outset, the parties disputed whether they had had a dating relationship, and the court sought to resolve that question as a threshold matter because a dating relationship would lower the burden of proof and place the matter in Family Court. Plaintiff called a witness who testified that the parties had not dated, and a second witness testified that she had translated voice messages from Hindi to English for plaintiff. The court issued mutual temporary restraining orders, and trial continued on November 6.

Defendant moved in limine to strike testimony and exclude witnesses, and plaintiff responded with a declaration supporting his attorney's fees request which had increased to \$13,888. Plaintiff asserted that a significant portion of his attorney's fees resulted from defendant's "irresponsible legal tactics." It was plaintiff's belief that defendant was forcing him to defend baseless claims and engaging in delay tactics to increase his litigation costs. Plaintiff claimed that defendant had violated the temporary restraining order and tried to intimidate witnesses.

When trial resumed on November 6, the court proceeded without making a threshold ruling regarding a dating relationship. A second translator testified about emails written in Hindi, and defendant fainted during the direct examination of plaintiff's next witness. She was transported to the hospital, the matter was reset to November 30, and the parties were ordered to meet and confer regarding translation disputes and witnesses testifying telephonically from India.

Defendant sought a four-month continuance on medical grounds, supported by a letter from her primary care physician stating that she was emotionally distraught and suffering from anxiety and depression leading to panic attacks. The physician had prescribed medication, advised defendant to consult a therapist, and declared defendant was "in no state to stand a court trial." The ex parte motion was denied without prejudice based on insufficient detail to support a good cause finding. Defendant filed a new

motion supported by a further letter from defendant's physician in which she explained that defendant was not fit to stand trial on November 30, she would need six to eight weeks to stabilize on anti-anxiety medication, after eight weeks she may be able to attend 60- to 90-minute court sessions, and four months were needed to see a "remarkable improvement."

Plaintiff opposed the ex parte motion, and sought attorney's fees as a sanction for filing a meritless motion and refusing to meet and confer. Plaintiff's attorney related in a supporting declaration that opposing counsel refused to comply with the meet and confer order and had told her he was not worried about an attorney's fees award because defendant was judgment proof. Plaintiff's attorney believed defendant and her attorney were engaging in delay tactics to avoid trial on the merits and to financially exhaust plaintiff before obtaining substantive relief. She stated that defendant's mother had attempted to contact plaintiff, and she provided documentation that defendant had asked a friend of plaintiff's to speak to him about the case on her behalf in violation of the temporary restraining order.

The court found good cause to grant a medical continuance for 45 days. It reset the matter to January 12, 2016, set a new compliance date for the parties to meet and confer, set a contempt hearing to sanction defendant's attorney \$1,000 in the event of failure to comply with the meet and confer order, and extended the temporary restraining order protecting plaintiff. In light of the prejudice to plaintiff resulting from defendant's unavailability, the court did not extend the temporary restraining order protecting defendant beyond its November 30 expiration date.

Plaintiff's attorney filed an affidavit to support an order to show cause re contempt describing defendant's alleged restraining order violations. The attorney also applied ex parte for an order requiring defendant to appear in court to be served with the continuing temporary restraining order and the contempt documents because defendant's attorney had refused to accept service. Defendant moved to strike the order to show cause and to

vacate the contempt arraignment set for January 5, 2016. Defendant did not appear at the arraignment and her attorney entered a not guilty plea on her behalf.

Trial resumed on January 12. Plaintiff called four witnesses, a defense witness was taken out of turn, the court continued the matter to January 28, and it denied defendant's request to reissue a temporary restraining order protecting her from plaintiff. A few days later defendant's attorney withdrew from the case, and defendant represented herself for the remainder of trial, which consumed an additional three half-days of testimony including testimony from both plaintiff and defendant. At the end of trial, the court granted plaintiff's request for a three-year civil harassment restraining order enjoining defendant from contacting plaintiff. The court denied defendant's request for a reciprocal order, finding her assertion of assaultive conduct not credible. It found defendant had not met her burden to prove harassment either by clear and convincing evidence or by a preponderance of the evidence (the burden in a domestic violence case).

Motion for Attorney's Fees

Plaintiff sought attorney's fees (\$33,237.50) and costs (\$1,843.50). Counsel billed at the rate of \$250 per hour, and she broke down her fees in a supporting declaration reflecting time spent meeting with plaintiff; reviewing documents; preparing for trial; arranging document translation; appearing in court; preparing discovery; reviewing, researching, and responding to motions; and corresponding with opposing counsel. As a courtesy to plaintiff, counsel did not bill for over 100 phone calls (totaling 555 minutes) with plaintiff; calls between her associate and plaintiff; and settlement-related calls with an attorney defendant engaged briefly in December 2015.

Defendant retained new counsel to oppose the motion, which was heard on April 29, 2016. Plaintiff and his attorney were present at the hearing. Defendant's new attorney appeared and related that defendant's medical condition had declined. He provided the court with a doctor's note and acknowledged that the hearing could proceed in defendant's absence.

Plaintiff's attorney clarified she was not seeking fees for contempt-related work, and she offered to reduce her request by \$500 for a contempt-related court appearance. Nor was she seeking fees for communications with defendant's current attorney.

Defendant's attorney argued that defendant should not be responsible for attorney's fees attributable to her second attorney's litigation tactics because defendant did not control those decisions, and an equitable fee award would be \$8,000 given defendant's frail mental state and job loss. He urged that fees for communicating with opposing counsel by email (\$6,250) be substantially reduced, and that plaintiff not be awarded fees for preparing his initial restraining order request (\$2,337.50) and responding to defendant's cross-request (\$1,425) because both parties obtained temporary restraining orders at the onset of the litigation and the fees were not adequately substantiated. Counsel argued that plaintiff not be awarded an initial court appearance fee (\$750); discovery-related fees (\$2,750); and fees for compelling defendant to provide CLETS-related identifying information (\$375), responding to ex parte requests (\$1,250), appearing at ex parte hearings (\$1,000), and for cumulative witness testimony.

The court noted it had cautioned defendant that her litigation strategy was risky because the non-prevailing party was subject to an attorney's fees award, and on multiple occasions both parties were admonished that the prevailing party would likely recover attorney's fees. The court also observed that plaintiff was forced to incur expenses responding to defendant's several unnecessary requests in addition to defendant's unsubstantiated position that she and plaintiff had been in a dating relationship, and that plaintiff's demand for defendant's identifying information was necessary given that defendant had withheld her true name. The court described the matter as highly contentious and highly litigated, with extensive proceedings spanning multiple half-day sessions. In the court's view, plaintiff's attorney had substantially pared down her request for attorney's fees, and as submitted the request was not unreasonable. Nonetheless, the court reduced the award to \$31,350. The court deducted \$500 for the

contempt-related appearance; it made two reductions related to block billing (\$275 and \$187.50); it reduced the first appearance fee by \$250 (\$750 to \$500); the email communication fee by \$175 (\$6,250 to \$6,075); and two ex parte hearing appearance fees each by \$250.

The court entered a written order reflecting the award of attorney's fees (\$31,350) and costs (\$1,843.50), and a separate order denying defendant's pro per request for a statement of decision filed on May 9, 2016. Representing herself, defendant filed a notice of appeal and an opening brief in this court.

II. DISCUSSION

The prevailing party in a civil harassment action may be awarded court costs and attorney's fees. (Code Civ. Proc., § 527.6, subd. (s); undesignated statutory references are to the Code of Civil Procedure.) The decision whether to award attorney's fees to a prevailing party in a civil harassment proceeding is committed to the trial court's discretion. (*Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802.) The trial court has broad authority to determine the amount of a reasonable fee, and an appellate court will not interfere with that determination absent a manifest abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) De novo review is warranted to the extent the appeal presents a question of law. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

Defendant advances numerous challenges to the attorney's fees award, none of which warrants reversal. Defendant argues that plaintiff's motion was improper because it miscited the relevant subdivision of section 527.6 authorizing attorney's fees to the prevailing party. Plaintiff's moving papers cited subdivision (r) (regarding transmittal of restraining order information to the Department of Justice) instead of subdivision (s). But reversal requires prejudice (Cal. Const., art. VI, § 13), and the clerical error did not mislead defendant, who cited the proper subdivision in her opposition papers, or the court.

Defendant next argues that the trial court was biased against her, citing the court's opening comments at the hearing on the attorney's fees motion that " 'attorney's fees are appropriate here,' " and its observation that it did not find defendant's allegations against plaintiff at trial to be credible. She complains that in ruling on the motion the trial court did not take judicial notice of the trial proceedings, it relied on hearsay (counsel's declaration in support of the attorney's fees request), and it conducted the hearing in her absence. But defendant cites no relevant authorities to support her view that the hearing was conducted in an improper manner, and we are aware of none. Defendant was represented by counsel who, as the trial court noted, advocated zealously on her behalf, and the court considered his arguments. Counsel did not request a continuance or object to the hearing proceeding without defendant present; defendant has therefore forfeited any argument related to her absence. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486 ["Points not raised in the trial court will not be considered on appeal"].)

Defendant complains that attorney's fees related to her continuance requests do not come within section 527.6's fee provision, citing authority distinguishing claims under an applicable fee-shifting statute from claims for which no fee-shifting statute applies. (*Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672.) Section 527.6's attorney's fees provision applies to "action[s] brought pursuant to this section." (§ 527.6, subd. (s).) An "action" is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (§ 22.) Plaintiff prevailed in both his action against defendant and in defendant's cross-action. He was entitled to reasonable fees, including those related to defendant's continuance requests. Defendant argues she was entitled to ask for the continuances as reasonable accommodations under California law (Cal. Rules of Court, rule 1.100) and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

Two of defendant's continuance motions were based on medical disability. No fees were sought related to the first motion which was denied. The second motion was granted only in part (the court found good cause to continue the trial 45 days, not four months). Plaintiff was awarded \$500 for preparing an opposition to the second motion which included a request to sanction defendant and her attorney for violating court orders, supporting declarations, and exhibits, and \$500 for the related court appearance. Defendant did not contest the appearance fee, and in light of this expansive record we find no abuse of discretion or chilling effect on disability protections by awarding fees related to the written opposition.

Defendant contends that plaintiff achieved only limited success in the trial court and was thus not entitled to a full attorney's fees award, pointing to the dismissal of the civil contempt matter. But plaintiff did not seek fees related to the contempt matter. Nor does its disposition diminish plaintiff's success in the underlying civil harassment litigation, given that he agreed to dismiss the civil contempt matter without prejudice because criminal contempt charges had been filed against defendant.

Defendant also argues that plaintiff's attorney's fees were inflated and the trial court "failed to account" for that inflation. But the record shows the trial court carefully reviewed each line item requested and exercised its discretion to make reasonable reductions.

Lastly, defendant argues that the trial court erred by not issuing a statement of decision under section 632, which defendant requested some 10 days after the hearing. As defendant notes in her opening brief, "[t]he trial court is not required to prepare a statement of decision in ruling on an attorney[']s fees motion." (Citing *Maria P. v. Riles* (1987) 43 Cal.3d 1281, in which the Supreme Court explained: "Cases decided under section 632 generally have held that a statement of decision is not required upon decision of a motion. [Citations.] Courts have created an exception for proceedings involving custody of children. [Citations.] However, we have discovered no case requiring a

statement of decision for an order on a motion for attorney fees.” (*Id.* at p. 1294.).) But even if section 632 applied to the attorney’s fees motion at issue here, defendant’s request was untimely. Section 632 provides in relevant part: “The [trial] court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision *unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision.*” (Italics added.) Defendant was thus required to request a statement of decision before submission because the hearing on plaintiff’s motion concluded in less than one day. Nor can defendant show prejudice from the denial of her request for a statement of decision, as the trial court thoroughly explained the basis for its ruling at the conclusion of the hearing.

III. DISPOSITION

The order awarding attorney’s fees and costs to plaintiff is affirmed. Costs on appeal are awarded to plaintiff.

Grover, J.

WE CONCUR:

Mihara, Acting P. J.

Danner, J.

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